

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

§ 1 - Contract Conclusion

1.1 All goods and services (hereinafter referred to as "Deliverables") of ERICH DIECKMANN GmbH are based solely on these Terms and Conditions of Sale and Delivery (hereinafter referred to as "Terms and Conditions"). ERICH DIECKMANN does not acknowledge any terms and conditions of business of the customer, which conflict with or deviate from these Terms and Conditions or any terms and conditions of business of the customer, which are not regulated in these Terms and Conditions unless ERICH DIECKMANN has expressly consented in writing to their application. These Terms and Conditions of ERICH DIECKMANN shall also apply if ERICH DIECKMANN delivers the deliverables to the customer without reservation while being aware of terms and conditions of business of the customer, which conflict with or deviate from these Terms and Conditions or which are not regulated in these Terms and Conditions or if the customer, in its enquiry or order, refers to the application of its terms and conditions of business.

1.2 In the absence of any special agreement, the contract shall come about upon written confirmation of the order by ERICH DIECKMANN or by ERICH DIECKMANN providing the Deliverables.

1.3 The INCOTERMS as amended from time to time shall apply in addition.

1.4 These Terms and Conditions apply only in relation to an entrepreneur ("Unternehmer") within the meaning of Paragraph 310(1) German Civil Code (BGB).

§ 2 - Prices

2.1 Unless expressly otherwise agreed, prices are stated in euros, delivery "ex works" (EXW) including packaging and duty unpaid. Any further costs shall be borne by the customer.

2.2 ERICH DIECKMANN's prices do not include the statutory value added tax; ERICH DIECKMANN shall indicate said statutory value added tax separately in the invoice at the statutory rate on the date the invoice is issued.

§ 3 - Payment

3.1 Unless expressly otherwise agreed, payment must be made without any deductions immediately after receipt of the invoice.

3.2 If cheques and bills of exchange are

accepted by ERICH DIECKMANN, they shall be deemed payment only once they have been honored. Any discount charges and the costs of any money transfer shall be borne by the customer.

3.3 The customer has a right to offset only counterclaims, which are undisputed, are acknowledged by ERICH DIECKMANN, or which have become final and absolute. The customer shall have a right of retention only insofar as the customer's counterclaim is based on the same contractual relationship.

3.4 All costs, fees and charges associated with a payment (including letters of credit) shall be borne by the customer.

3.5 The deduction of any cash discount shall require a special written agreement.

§ 4 - Deterioration of Financial Situation

4.1 If the customer's financial situation deteriorates after the contract has been concluded or if other facts exist or become apparent after the contract has been concluded, which justify the assumption that ERICH DIECKMANN's claim to the consideration is in jeopardy due to a lack of solvency on the part of the customer ERICH DIECKMANN shall be entitled to demand security from the customer and/or to revoke the terms allowed for payment, also for other debts. In the event that the customer is not able to provide the security demanded within a reasonable period ERICH DIECKMANN shall be entitled to rescind the contract. Any claims which already exist as a result of deliverables, which have been provided, or because of late performance shall remain unaffected as shall ERICH DIECKMANN's rights under Paragraph 321 German Civil Code (BGB).

4.2 The following shall particularly apply as facts, which justify the assumption that ERICH DIECKMANN's claim to the consideration is in jeopardy due to a lack of solvency on the part of the customer: (a) attachments or other enforcement measures levied upon the customer's assets, (b) the occurrence of a ground for insolvency (inability to pay or overindebtedness) at the customer, (c) the customer files a petition for the opening of insolvency proceedings over the assets of the customer, (d) a third party files a petition for the opening of insolvency proceedings over the assets of the customer unless such action is taken as an abuse of the law, (e) insolvency proceedings are opened over the customer's assets, (f) the opening of insolvency proceedings over the customer's assets is dismissed for lack of assets, (g) ERICH DIECKMANN's commercial credit insurance company rejects insurance cover for the debt owed by the customer.

§ 5 - Delivery Terms - Period - Delivery

5.1 Unless expressly otherwise agreed, delivery shall be effected "ex works" (EXW) the place

stated in ERICH DIECKMANN's offer or acceptance or, if no point of destination is stated in the offer/acceptance, "ex works" Iserlohn/Germany.

5.2 The obligation for ERICH DIECKMANN to comply with an agreed time of performance or the agreed delivery period is conditional on the timely and proper performance of the customer's duties, particularly compliance with the agreed payment terms and performance of the agreed duties to cooperate (e.g. procurement of documents, permits, releases) as well as the timely and proper answering of all questions to be clarified by the customer. The right to raise the objection of non-performance of the contract (Einrede des nicht erfüllten Vertrages) is reserved. Moreover, the delivery period shall be deemed to have been met if the goods/services to be delivered have left ERICH DIECKMANN's works, or if ERICH DIECKMANN has notified the customer of their readiness for dispatch, by the time the delivery period expires. Deliveries may be consolidated and part deliveries may be made to such extent as is reasonable.

5.3 Force majeure, i.e. unforeseeable events, outside the control of ERICH DIECKMANN and for which ERICH DIECKMANN is not responsible (e.g. administrative measures and orders (irrespective of whether such measures or orders are valid or void), fire, floods, storms, explosions or other natural catastrophes, mobilizations, wars, riot, industrial disputes including strikes and lockouts) shall release ERICH DIECKMANN from its duties owed towards the customer for the duration of the disturbance and to the extent of its effect. This shall also apply if said events occur at a time when ERICH DIECKMANN is already late with performance ("in Verzug"). ERICH DIECKMANN shall, as far as can reasonably be expected, provide the customer with the necessary information and adjust ERICH DIECKMANN's obligations to the altered conditions in good faith. If it is not possible to provide the deliverables to the customer within a reasonable period due to such events, the customer and ERICH DIECKMANN shall have the right to rescind the contract or, as the case may be, to rescind such part of the contract as has not yet been performed. There shall be no right to damages because of any such rescission.

5.4 ERICH DIECKMANN shall be released from its obligation to deliver if ERICH DIECKMANN is, for no fault of its own, itself not supplied in due time with the correct goods, which have been ordered to perform the contract.

5.5 ERICH DIECKMANN shall be liable for late performance in accordance

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§ 8 - Acceptance - Call Off

8.1 If the customer is late with acceptance, ERICH DIECKMANN can store the goods at the customer's cost and risk and invoice all costs that arise as though the goods had been delivered. The same applies if goods, which are ready for dispatch, cannot be dispatched due to circumstances, for which the customer is answerable.

8.2 If dispatch or delivery is delayed by more than one week at the customer's request or if the customer is late with acceptance, ERICH DIECKMANN can demand compensation for the storage in the amount of 0.5 %, however in total no more than 5 %, of the net price of the goods to be delivered for each started week. The parties are at liberty to prove that the storage costs were greater or less or that no storage costs whatsoever were incurred. This shall be without prejudice to the statutory rights to rescind the contract and to demand damages.

8.3 The customer must accept goods, which have been purchased to be called off, and must do so within 2 months after having been requested by ERICH DIECKMANN to call them off.

§ 9 - Warranty Claims

9.1 The claims arising out of a warranty of quality (Sachmängel) shall be time-barred 12 months after the passing of risk. This does not apply to the extent that Paragraphs 438(1) no. 2, 479(1), 634 a(1) no. 2 and Paragraph 438(3) German Civil Code (BGB) prescribe longer periods, or for liability for damage arising out of an injury to life, body or health or for liability for damage due to an intentional or grossly negligent breach of duty

9.2 The customer must complain to ERICH DIECKMANN in writing about any defects in quality (Sachmängel) without undue delay, however no later than within seven days following performance (overt defects) or discovery of the defect. Otherwise the right to assert any warranty claims is excluded. ERICH DIECKMANN does not agree to any restriction of the customer's statutory duties to inspect and to report any complaints (particularly in accordance with Paragraph 377 German Commercial Code (HGB)).

9.3 In the event of any complaints about defects the customer may withhold payments only to such extent as is reasonably in proportion to the defects in quality (Sachmängel) that have occurred. The customer may withhold payments only if a justified complaint is asserted about defects. If the notice of defects was intentionally or negligently unjust, ERICH DIECKMANN shall be entitled to demand that the customer compensates it for the expenses incurred due to the unjustified complaint about defects.

with the statutory provisions and taking into account the limitations regulated in Clause 11 and subject to the following conditions: If late performance is based on merely ordinary fault and there is not compulsory liability for an injury to life, body or health, or for the giving of a guarantee or the assumption of a risk of procurement, the liability for damage due to late performance shall be limited in that the customer can demand 0.5 % for each complete week of delay, however in total a maximum of 5 %, of the net price for such portion of the deliverable as is not provided on time due to the late performance. This does not entail any change to the burden of proof to the detriment of the customer. This is without prejudice to the customer's statutory right of rescission.

5.6 Upon request by ERICH DIECKMANN, the customer shall be under an obligation to declare within a reasonable period whether it is rescinding the contract because of the late performance or whether it insists on performance.

§ 6 - Packaging - Dispatch - Transport

6.1 Unless expressly otherwise agreed, the type of packaging, method of dispatch and delivery route shall be determined by ERICH DIECKMANN.

6.2 Dispatch shall be at the customer's risk even if it has been agreed that the delivery is carriage paid. If dispatch is delayed as a consequence of circumstances, for which the customer is responsible, the risk shall pass to the customer upon the day that the goods are ready for dispatch.

§ 7 - Construction - Quality

7.1 ERICH DIECKMANN's statements about dimensions, weights, performances or materials are made with care, but are not binding unless they have been expressly designated as binding; the same applies to all statements regarding design and proposals.

7.2 ERICH DIECKMANN reserves the right to make reasonable changes due to technical developments. With regard to its deliverables ERICH DIECKMANN must only comply with the generally accepted rules of technology, the relevant safety regulations and the agreed technical data. Any stipulations beyond that regarding quality and/or use shall require an express written agreement between the parties.

7.3 ERICH DIECKMANN shall take out transport insurance only upon the customer's express request and at the customer's cost.

9.4 ERICH DIECKMANN must first always be given the opportunity to render supplementary performance within a reasonable period.

9.5 Any supplementary performance pursuant to Paragraph 439(1) German Civil Code (BGB) is undertaken by ERICH DIECKMANN merely out of goodwill and without the acknowledgement of any liability unless ERICH DIECKMANN has agreed otherwise with the customer or ERICH DIECKMANN has, either before or in connection with undertaking supplementary performance, expressly acknowledged to the customer that it has a right to supplementary performance.

9.6 The customer shall have no warranty claims for natural wear and tear or damage, which occurs after the passing of risk and as a consequence of incorrect or careless treatment, overly heavy use, unsuitable operating equipment or materials or by reason of special external influences, not provided for by the contract. If the customer or third parties undertake improper changes or repair work, said changes or repair work and the consequences thereof shall likewise not give rise to any warranty claims.

9.7 The customer shall not have any claims because of any expenses that are necessary for the purposes of the supplementary performance, in particular the transport costs, infrastructure costs, labour costs and cost of materials, to the extent that said costs increase because the subject matter of the delivery was subsequently transported to somewhere other than the place of delivery unless said transportation complies with its intended use.

9.8 The customer cannot burden ERICH DIECKMANN with any complaints until ERICH DIECKMANN has acknowledged the complaint. This shall particularly be the case as regards any burdening with flat rates or lump sums for costs, charges or damages.

9.9 Unless otherwise provided in these Terms and Conditions, the consequences of defective performance shall be governed by the statutory provisions. Clause 11 shall apply to claims for damages. Any more far-reaching claims or claims because of a defect in quality (Sachmängel) other than the claims regulated by these Terms and Conditions are excluded.

§ 10 - Property Rights, Defects

10.1 Unless expressly otherwise agreed, ERICH DIECKMANN shall be obliged to render the deliverables free from third-party Intellectual Property Rights only in the country of the place of manufacture and the place of

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performance. "Intellectual Property Rights" for the purposes of these Terms and Conditions shall be patents, utility models and design patents, trade marks, including respective applications for the same, as well as copyrights.

10.2 If a third party asserts any justified claims against the customer because of any infringement of Intellectual Property Rights by any deliverables rendered by ERICH DIECKMANN and use in accordance with the contract, ERICH DIECKMANN shall be liable towards the customer as follows: ERICH DIECKMANN shall, at ERICH DIECKMANN's option and cost, either obtain a right of use for the deliverables concerned or change them such the Intellectual Property Right is not infringed, or it shall exchange them. If this is not possible upon reasonable terms and conditions the customer shall have the statutory right of rescission or the statutory right to reduce the price. The obligation to pay damages shall remain unaffected hereby and shall be governed by Clause 11.

10.3 The obligations set out in Clause 10.2 above shall only subsist insofar as the customer informs ERICH DIECKMANN in writing and without undue delay of the claims asserted by a third party, does not acknowledge any infringement and all defensive action and settlement negotiations are reserved exclusively for ERICH DIECKMANN. If the customer ceases to use the deliverables for reasons of loss mitigation or for other important reasons it shall be obliged to point out to the third party that the cessation of use does not imply any acknowledgement of any infringement of the Intellectual Property Right.

10.4 Claims of the customer are excluded if and to the extent that the customer is solely responsible for the infringement of the Intellectual Property Right. Claims of the customer are furthermore excluded to the extent that the infringement of the Intellectual Property Right is caused by special stipulations by the customer, by an application not foreseeable by ERICH DIECKMANN or by the fact that the goods delivered are changed by the customer or are used together with products not supplied by ERICH DIECKMANN.

10.5 If ERICH DIECKMANN has to deliver according to drawings, models or patterns of the customer the customer guarantees that the articles produced in accordance with its stipulations do not infringe any third party Intellectual Property Rights. If a third party asserts a claim of prohibition of the manufacture or delivery of the articles against ERICH DIECKMANN and does so invoking an Intellectual Property Right belonging to

said third party, then ERICH DIECKMANN shall be entitled to cease manufacture or delivery without reviewing the legal situation. In any such case, the customer shall be obliged to indemnify ERICH DIECKMANN from and against said alleged or actual claims, damages and costs. In any such case, the Customer must also reimburse ERICH DIECKMANN all damage as well as necessary costs and expenses, which we have incurred as a result of or in connection with the claim by the third party.

10.6 Any more far-reaching claims or claims by the customer against ERICH DIECKMANN or against vicarious agents and servants of ERICH DIECKMANN because of a defect in title (Rechtsmangel) other than the claims regulated in this Clause 10 are excluded.

§ 11 - Damage claims

11.1 ERICH DIECKMANN shall be liable for damages and for the reimbursement of wasted expenditure (vergebliche Aufwendungen) within the meaning of Paragraph 284 German Civil Code (BGB) (hereinafter referred to as "damages") due to defects in the goods or services or because of a breach of other contractual or non-contractual obligations, particularly arising out of tort, only in the case of intent or gross negligence. The above limitation of liability shall not apply in cases of injury to life, body or health, if a guarantee is given or the risk of procurement is assumed, in the case of the breach of any material contractual obligations or in the case of liability under the German Product Liability Act (Produkthaftungsgesetz).

11.2 Damages due to a breach of material contractual obligations is limited to the reimbursement of such damage as ERICH DIECKMANN ought to have foreseen as a possible consequence when the contract was concluded due to circumstances that were apparent to ERICH DIECKMANN (damage which is typical for the contract) providing there was no intent or gross negligence or liability is for an injury to life, body or health, for the giving of a guarantee or the assumption of a risk of procurement or pursuant to the German Product Liability Act (Produkthaftungsgesetz).

11.3 Damage which is typical for the contract for the purposes of Clause 11.2 is damage with the following maximum quantum: a) per case of damage: a maximum of the amount of the net purchase price of the contract concerned, and b) in the event of more than one case of damage in relation to the same customer within one calendar year: a maximum of the amount of turnover, for which the customer purchased products from ERICH DIECKMANN in the previous calendar year. In any case, indirect damage (e.g. lost profit or damage resulting from interruptions in production) does not constitute damage which is typical for the contract for the purposes of Clause 11.2.

11.4 Irrespective of Clause 11.3 above, when determining the quantum of the claims for

damages that exist against ERICH DIECKMANN the economic circumstances at ERICH DIECKMANN, the type, scope and duration of the business relationship, any contributory causation and/or fault on the part of the customer must be taken reasonably into account to the benefit of ERICH DIECKMANN in accordance with Paragraph 254 German Civil Code (BGB). In particular, the damages, costs and expenses to be borne by ERICH DIECKMANN must be reasonably proportional to the value of the products supplied by ERICH DIECKMANN.

11.5 All limitations of liability shall apply to vicarious agents and servants to the same extent.

11.6 The above provisions do not entail any change to the burden of proof to the detriment of the customer.

11.7 Material contractual obligations for the purposes of Clauses 11.1 and 11.2 are obligations, the performance of which make the proper implementation of the contract possible in the first place, and compliance with which the customer is usually allowed to rely on.

§ 12 - Audits

12 If the customer is entitled to carry out audits at ERICH DIECKMANN, or if the customer has been granted other rights of access and/or inspection rights in relation to ERICH DIECKMANN, the customer can exercise any such right only following prior agreement with ERICH DIECKMANN, during normal business hours and without interfering with the operational procedure at ERICH DIECKMANN.

§ 13 - Machinery and Tooling and Property Rights

13.1 Unless expressly otherwise agreed, the pictures, drawings, calculations and other documents relating to the product, application or project and sample work pieces produced or provided by ERICH DIECKMANN and which include know-how that is worthy of protection shall remain the property of ERICH DIECKMANN and are subject to ERICH DIECKMANN copyright even if ERICH DIECKMANN has entrusted them to the customer. They may not be reproduced or made accessible to third parties without the express prior written consent of ERICH DIECKMANN.

13.2 Title to the machinery, tooling and other means of production, which ERICH DIECKMANN uses in connection with the production of the products to be supplied to the customer shall only be transferred to the customer if the parties have entered into

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a separate written agreement on this which also regulates the remuneration for any such transfer of title.

13.3 Existing Intellectual Property Rights shall remain with ERICH DIECKMANN. The transfer of any Intellectual Property Rights and the grant of any right to use any Intellectual Property Right - of whatever kind - to the customer shall require express written agreement between the parties.

13.4 ERICH DIECKMANN shall be solely entitled to the rights - particularly Intellectual Property Rights - to all work results, which ERICH DIECKMANN achieves in connection with the cooperation between ERICH DIECKMANN and the customer.

§ 14 - Reservation of Title

14.1 The goods to be delivered shall remain the property of ERICH DIECKMANN until all of the claims which ERICH DIECKMANN has against the customer arising out of the business relationship have been satisfied (reservation of title). This shall also apply if the purchase price has been paid for specific supplies of goods designated by the customer.

14.2 In the event of any breaches of duty by the customer, particularly in the event of any late payment, ERICH DIECKMANN shall have a right of rescission and retraction; the customer shall be obliged to surrender the goods delivered that are subject to the reservation of title (hereinafter referred to as "Reserved Goods") and must - to the extent necessary - grant ERICH DIECKMANN access to its property and premises. The taking back of the purchased goods by ERICH DIECKMANN shall constitute rescission of the contract. After taking back the purchased goods, ERICH DIECKMANN shall be entitled to realize said goods, and the proceeds from any such realization less the reasonable realization costs shall be offset against the customer's liabilities.

14.3 The customer shall be under a duty to treat the Reserved Goods with care; it shall particularly be under a duty to adequately insure said goods at its own cost and for their replacement value against damage due to fire, water or theft. If servicing and inspection work is necessary the customer must carry out such servicing and inspection work in a timely manner and at its own cost.

14.4 The customer may not pledge or transfer the Reserved Goods by way of security while the reservation of title exists. In the event of any distraint, seizures or other disposals or intervention by third parties the customer must inform ERICH DIECKMANN without undue delay and in writing so that

ERICH DIECKMANN can take court action against said measures. If the third party is not in a position to reimburse ERICH DIECKMANN the court and out-of-court costs, the customer shall be liable for the loss incurred by ERICH DIECKMANN.

14.5 The customer is entitled to resell in the ordinary course of business. The customer hereby already assigns all accounts receivable accruing to it against its customers or third parties as a result of reselling the Reserved Goods and assigns them to ERICH DIECKMANN in the amount of the final invoice amount (including value added tax) of the account receivable and more particularly does so irrespective of whether the Reserved Goods were sold before or after processing. The customer shall remain authorized to collect said account receivable even after the assignment. ERICH DIECKMANN's authority to collect the account receivable itself shall remain unaffected by this. ERICH DIECKMANN shall, however, not collect the account receivable so long as the customer complies with its payment obligations out of the proceeds collected, is not in default of payment and in particular no petition for the opening of insolvency proceedings has been filed and payments have not been suspended. However, if this is the case, ERICH DIECKMANN can demand that the customer discloses the assigned accounts receivable and the debtors owing said accounts receivable to ERICH DIECKMANN, provides ERICH DIECKMANN with all of the information required for collection, hands over the documents pertaining thereto and notifies the debtors (third parties) of the assignment.

14.6 Any processing or transformation of the Reserved Goods by the customer is always undertaken for and on behalf of ERICH DIECKMANN. If the Reserved Goods are processed with other property not belonging to ERICH DIECKMANN, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other processed property at the time of processing. Moreover, the same shall apply to the object created by means of the processing as applies to the Reserved Goods.

14.7 If the Reserved Goods are inseparably mixed with other property not belonging to ERICH DIECKMANN, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other mixed property at the time of mixing. If the goods are mixed in such a way that the customer's goods are to be considered as the main goods, it shall be deemed to be agreed that the customer shall transfer co-ownership to ERICH DIECKMANN pro rata. The customer shall keep the sole ownership or co-ownership, which has thus accrued, safe on behalf of ERICH DIECKMANN.

14.8 If the value of all security interests, to

which ERICH DIECKMANN is entitled against the customer, exceeds the amount of all secured claims by more than 10 %, ERICH DIECKMANN shall, upon request by the customer, release a corresponding portion of the security interests. The choice of security interests to be released shall be up to ERICH DIECKMANN.

§ 15 - Miscellaneous

15.1 ERICH DIECKMANN is free in its choice of subcontractors and on no account has to give the customer their names.

15.2 Unless expressly otherwise agreed, the place of performance shall be Iserlohn.

15.3 In business dealings with entrepreneurs ("Unternehmer") it is agreed that for legal disputes, whose subject matter falls within the jurisdiction of the Amtsgerichte [Local Courts], the place of jurisdiction shall be the Amtsgericht [Local Court] Iserlohn and for legal disputes, whose subject matter falls within the jurisdiction of the Landgerichte [Regional Courts], the place of jurisdiction shall be the Landgericht [Regional Court] Hagen. ERICH DIECKMANN shall, at its option, also be entitled to sue at the Customer's place of registered office (Sitz).

15.4 The laws of the Federal Republic of Germany shall apply exclusively with the exception of the UN Sales Convention (CISG).

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